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AUTHOR Kassewitz, Ruth B.
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ABSTRACT

This address traces the historical roots and describes the enactment of the Federal "sunshine law," which provides for public access to meetings held in the public interest. Based on Florida's sunshine law, the new Federal statute requires that all congressional committees and most Federal Agencies conduct their business in the open. Requirements embrace regulatory agencies, advisory committees, independent offices, and so on. Arguments against the law are discussed, and the specific implications of the statute are outlined with regard to specific Federal Agencies, record keeping by committees and other groups, and the definition of "sensitive meetings" and meetings of public interest. (KS)

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"THE SUNSHINE LAW -- A DOUBLE-EDGED SWORD"

Presented by

Ruth B. Kassewitz, APR
Communication Officer
Metropolitan Dade County

PUBLIC RELATIONS SOCIETY OF AMERICA GOVERNMENT RELATIONS WORKSHOP

November 4, 1976 -- Memphis, Tenn.

For hundreds of years, the people and the press have been beleaguered by governments that meet in secret.

The established practice dates all the way back to the earliest English Parliaments that insisted upon secret meetings. The motive seems to have been to prevent the King from knowing what was going on. It was also considered useful in concealing the debates and voting records from the electorate. Harsh punishment was meted out to the printer who dared to publish parliamentary debates.

Seemingly incongruous to a democracy, this English philosophy carried over into our own colonial history and later into our state and federal governments. The U.S. House of Representatives, however, has held open meetings since the beginning. The Senate opened its meetings in 1794, according to many who've studied and written about the People's Right to Know.

Perhaps strangest of all, they say, is the historical fact that our own Constitutional Convention worked in secrecy. Many consider this was the prime reason why The Federalist Papers had to be published to sell the document to the people.

Much of these traditional restrictions have gradually been relaxed with time. Former President Woodrow Wilson insisted "that public business is public business." But primarily we are where we are today, with a new Federal Sunshine Law and open meeting laws in at least 48 of the 50 states, due to the pressures exerted by the press, joined in more recent years by radio and television. (New York and Rhode Island have been the hold-outs.)

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The grandfather of the Government-In-The-Sunshine Law is a county judge from Gainesville, Florida, J. Emory Cross.

One night back in the mid-50s, Cross attended a Sigma Delta Chi meeting at the University of Florida. He heard students and newspaper people cry out for "open" meetings of state, county and city boards, commissioners and other governmental bodies.

He had to admit that he'd seen too much opportunity for hanky-panky, for deals among the politicians which were not in the public interest, serving as he was at the time as a State Senator. So he asked Sigma Delta Chi to help him research the law and find out what other states were doing about it. Nobody, they discovered, had devised a law with any teeth in it -- that provided penalties sufficient to stop the backroom dealings.

The country Florida senator, characterized by his deep South Cracker twang and his white suits, battled for more than 10 years, beginning in 1957 with the backing of the state's urban newspapers and Sigma Delta Chi. It was not really until Florida's rural county Pork Chop Gang was brought under control following reapportionment that Cross' bill, prohibiting secret meetings, passed both the Senate and House and became law. The bill he finally got through in 1967 made violators subject to six months in jail and $500 fine. Later, this was modified to 60 days in jail.

I tell you all this, because it is the Florida's Sunshine Law on which the new federal statute is based. Florida Senators Lawton Chiles and Dick Stone jockeyed it through with great difficulty, and it was signed into law by President Ford on September 13 of this year.

MIAMI HERALD political writer, John McDermott, asked Judge Cross what he thought of the new federal Sunshine Law, and he responded by saying that he fears it may have too many loopholes. He said he can understand the necessity for the federal law to allow closed door meetings on matters of security or national defense, but he is bothered with the premissiveness to hold closed door meetings where matters of personnel are involved, for instance.

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Just a word about these two Florida Senators: Dick Stone served as Secretary of State just prior to running for federal office and is so fervent in his support of full disclosure that Dick, in Tallahassee, removed the massive, solid Mahogany door leading into his cabinet office. His successor confides that such "openess" is disquieting at times, but he hasn't dared to put the door back on its hinges. Visit Stone today and you'll notice he maintains the same openess in his Washington office.

Senator Lawton Chiles is "Walkin' Lawton," an intelligent, compassionate, quiet, yet obviously very effective legislator who in his bid this year for re-election to the Senate limited himself to $10 contributions. Each participant has received this "One Equal Share" in his U.S. Senate representative. (Exhibit)

Lawton Chiles introduced his federal Government In The Sunshine Act, later to be known as S-5, on August 4, 1972. U.S. Congressman from Miami, Dante Fascell, introduced a companion measure in the House on August 17, 1972.

Basically it requires for the first time that all congressional committees and most federal agencies, some 50 of them, conduct their business in the open. The open-door requirements embrace regulatory agencies, advisory committees, independent offices, the Postal Service -- almost all executive branch agencies except the Cabinet departments.

A chief criticism by opponents, including Senator Jacob Javits is a provision that would make federal agency officials personally liable for court costs resulting from violation of the Act. Chiles offered a substitute amendment to broaden the Bill's language to allow judges to levy court costs if they choose against federal officals who "willfully and repeatedly" violate the act, as well as plaintiffs who file "frivolous" sunshine suits.

According to a Herald Washington bureau reporter, Javits and Senator Charles Percy argued that making officials personally liable for violations of the law would discourage "talented people" from government service.

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Chiles said that such "individual responsibility on the part of officials is what makes Florida's law work so well."

The Federal Reserve Board, the regulatory agencies,and business meetings of the Securities and Exchange Commission were hotly debated, but are included under S-5.

Federal Reserve Board chairman, Arthur F. Burns, argued that his was too important an agency to be covered by the anti-corruption measure. "The mere thought that an anti-corruption bill need apply to the Federal Reserve would cast doubt on the integrity of the nation's central bank and would undermine confidence in the dollar and the future of the economy," Burns wrote to the Senate Government Operations Committee chairman, Abraham Ribicoff.

SEC chairman Ray Garrett, Jr., said "the proposed procedures would tend to destroy flexibility which, he believes, is the essence of the administrative process. The Bill would impede effective communication among Commission members, between the Commission and staff, resulting in less well-considered judgments; cause administrative delays; and create a cloud of uncertainty over agency rules and orders, otherwise valid, if the agency should err in determining that a particular meeting may be closed."

The White House supported the heavy lobbying effort by the Federal Reserve Board and Securities and Exchange Commission to exempt them from the transcript requirements; so Chiles and Fascell offered a compromise permitting those agencies to keep detailed minutes of their meetings, instead of transcripts, when information affecting financial markets is discussed.

The Bill agreed upon stipulates that all meetings among the commissioners that head independent regulatory bodies or similar agencies, must be open as a general rule. Meetings may be closed only if the subject matter to be discussed falls within the specified areas called "sensitive," such as matters involving the national defense or foreign policy, agency personnel rules and practices, trade secrets, unwarranted invasion of personal privacy, investigatory records compiled for law enforcement purposes,

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and premature information disclosures which would, as in the case of an agency which regulates currencies, securities, commodities, or financial institutions, be likely to lead to significant financial speculation in currencies, etc. endangering the stability of any financial institutions. These which I've just related are quoted from the Bill and are not all-inclusive of the exempt coverages. I've tried only to highlight.

S-5 makes it necessary for agencies to keep a full record of any meeting that is closed to the public. Other provisions require timely public announcement of all agency meetings, whether they are open to the public or not. If a meeting time or place is changed, it's okay as long as the public is notified. Meeting notices are to be scheduled in the Federal Register. Of course, minutes must be kept of the meetings, voting must be recorded and these are to be made available to the public in a timely manner.

Important for us to note is the phrase, "open to public observations." This is intended to guarantee that ample space, sufficient visibility, and adequate acoustics will be provided.

An ex parte communique is one in which an interested party, i.e. a person with something to gain, gets a "private audience" with the one who is going to make the decision. It is inherently dishonest and violates every tenet of impartial hearings.

Section 4, as interpreted for me by Daniel Neal Heller, a prominent Miami attorney who's clients include the MIAMI NEWS, simply says that no one who has business with the agency should speak to any agency member in private. No member of the agency should permit himself to be spoken to. If any member of the agency has been spoken to, he has an obligation to "blow the whistle." Finally, if anyone has spoken ex parte, that person runs the risk of "losing the case" about which he has spoken.

Under the Federal Sunshine Law, the term "meetings" includes almost any gathering, formal or informal, of agency members, including conference telephone calls. Agencies

are required to keep transcripts of closed meetings, except when discussing very sensitive matters, such as monetary policy. In that instance, agencies may keep either minutes or transcripts.

On August 31, the day the conference report was passed by both the House and Senate, Senator Chiles said that final approval "will mark the beginning of a new era in the way our Government operates."

Chiles said the Act makes more meaningful the important principle that in a democracy, the public has a right to know not only what its Government decides, but why, and by what process.

"The Bill will require agencies to make some adjustments in the way they do business," Chiles said. "New attitudes may have to be learned, and old ones changed. But I am confident," still quoting Chiles, "that the agencies can and will implement this Act in a way that is fully in accord with the principles of openess on which the legislation is based.

After the Senate accepted his proposal for open meetings, Chiles went home and found this note pinned to his bedroom door:

"All meetings in this room shall be open to the public and the press unless closed by a vote of the majority."

Chiles told reporters the next morning that he may have to amend the resolution to narrow the definition of the word "meeting."

Surely the Sunshine Law is working well and effectively in Florida. Several court cases brought by newspapers have been upheld against local municipal councils and local school boards which were found dealing in secrecy on personnel matters, matters involving the acquisition of or sale of real estate, and the like.

On behalf of the Dade County Commission, we publish weekly calendars for distribution to the media and citizens, marking the dates, times and places for all government meetings in the public interest -- whether they are sponsored by the decision-making

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policy board, or citizen advisory councils. All our government doors are open. It's the Dade County policy that every piece of paper on administrators' desks, every report and memo is public information, and available. MIAMI NEWS reporter, Mort Lucoff, is so well known for his ability to read anything on administrators' desks, upside down, that the public officials toasted his recent birthday with a cake, suitably decorated with an upside down greeting.

Open, full disclosure is refreshing and challenging. It's clean, and I believe in Dade County it is encouraging a greater citizen participation ... a reaffirmation, as Senator Chiles says, that our government is part of the people, and not apart from it.

The basis for the whole business is to enable citizens in a democratic society to be fully informed on the conduct of government ... to have information that is accurate and undiluted, that they may fully utilize the liberties contemplated in the right to speak, and the right to have a part in government. This speaks to the very heart of our PRSA Code and Principles. We members of PRSA should be among the most eager for implementation.

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